IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Narendra Yadav & others Vs. State of Rajasthan
(1)D.B. CRIMINAL APPEAL NO.523/2000

Vijay Kumar alias Lucky & ors. Vs. State of Rajasthan
(2) S.B.CRIMINAL APPEAL NO.480/2000

against the judgment dt.19.8.2000 passed by
Special Addl.Sessions Judge(Women Atrocities), Sri Ganganagar,
in Sessions Case No.29/1999.

Date of Judgment: August 24,2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.HSS Kharlia,
Mr.Ramandeep Singh,
Mr.S.S.Dhillon,
Mr.Digvijay Singh, for appellants.

Mr.JPS Choudhary, Public Prosecutor.

Mr.Mahesh Bora,
Mr.D.L.Rawla, for complainant.

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The facts of the case disclose an act of unparallel evil and brutality in the intervening night of 11th and 12th

October, 1998, when two members of the family viz; Mst.Nirmala and her son Ajay were bettered to death by none other than a family friend viz; appellant Monu alias Virendra Singh and his associates appellants Narendra Yadav alias Hariyanvi and Reenu alias Narendra Singh. The occurrence is alleged to have witnessed by the only surviving member of the family viz; PW 1 Miss Shweta aged 18 years. Her father and brother PW 3 Amit were at far distance in Europe serving the Merchant Navy. Deceased Nirmala lived with her deceased son Ajay and injured witness PW 1 Miss Shweta in the locality known as Chawla Chowk, Purani Abadi, Sriganganagar. Receiving a telephonic information of the incident at about 8 AM on 12.10.1998, the incharge of the Police Station, Purani Abadi, Sriganganagar rushed to the spot and found PW 1 Shweta lying in seriously wounded condition. She was immediately removed to the hospital. The police inspected the site, prepared the inquest report and sent the dead bodies for post mortem. At about 10.30 AM on the same day, PW 13 Surendra Kumar, the incharge of the Police Station recorded the statement of PW 1 Ms Shweta in the hospital. She disclosed that on the preceding day i.e. 11.10.1998 at about 8 P.M., his brother's friend viz; appellant Monu visited their house. Her deceased brother Ajay after taking permission from mother deceased Nirmala went to see a movie with his friend Monu. Her mother closed the door and went to sleep.

She engaged herself in studies. In the night at about 3.00 when she came out of the bathroom after getting fresh, appellant Monu alongwith two boys aged 25-26 years entered into the room. One of the two miscreants was carrying knife in hand with face pasted by medical band-aid and other with muffled face. The miscreant with band-aid face inflicted number of stab wounds to her mother resulting into instantaneous death. He also inflicted injuries to her by knife. Monu and his associates collected the valuables from the house i.e. jewellery, cash. They also removed the ornaments from the body of her mother. In the morning, she was rescued by her neighbours. On this information, police registered a case for the offence under sections 302, 460, 307, 380 IPC. The statement of Ms Shweta was again recorded by PW 15 Yogendra Kumar, Judicial Magistrate, vide Ex.P.2.

2. During investigation on 17.10.1998, appellant Vijay Kumar Rana alias Lucky was arrested and in pursuance of the information given by him, some of the stolen articles were recovered. On 27.10.98, two other appellants viz; Inder Singh and Krishna Kumar were arrested and in pursuance of their information, certain incriminating articles were recovered. Appellant Inder Singh is the real brother of one of the main accused Narendra Yadav alias Haryanvi. Appellant Krishna Kumar is cousin of Narendra Yadav alias

Haryanvi. Appellant Narendra Yadav alias Haryanvi was arrested on 1.2.1999. In pursuance of the information given by him, the weapon of offence viz; a blood stained dagger was recovered. On the same day, appellant Reenu alias Narendra Singh, Monu alias Virendra Singh, both brothers, were also arrested. In pursuance of the separate informations given by them, part of the looted property was recovered. On the request of the police, the identification parade was arranged on 10.2.1999. PW 1 Shweta identified the unnamed miscreants i.e. Narendra Yadav alias Haryanvi and Reenu alias Narendra Singh as associates of Monu alias Virendra Singh, in the presence of PW 15 Yogendra Kumar, Judicial Magistrate.

3. After usual investigation, police laid chargesheet against the appellants for various offences. Appellants A-1 Monu alias Virendra Singh, A-2 Reenu alias Narendra Singh and A-3 Narendra Yadav alias Haryanvi were charged for the offences u/ss.302, 307, 460, 380, 201 and 120B IPC, while other appellants A-4 Vijay Kumar alias Lucky alias Rana, A-5 Inder Singh and A-6 Krishna Kumar for the offences u/ss.302/120B, 201, 411, 414 IPC. The prosecution in support of the case adduced oral and documentary evidence. The appellants in their statements u/s.313 CrPC denied the correctness of the prosecution evidence appearing against them. Monu alias Virendra Singh stated that he has been

falsely implicated at the instance of PW 4 Deepak Pathak, who was running a P.C.O. A quarrel for excessive telephone billing was the cause of his displeasure. Reenu alias Narendra Singh pleaded alibi. He stated that prior to 15 days of the incident, he alongwith his brother Monu had gone to Pithanpur in the State of U.P. to meet his maternal uncle. He also stated that he has been falsely implicated in the case. He was shown to Shweta at the Police Station. He further stated that before their arrest, police had flashed their photographs in the newspaper. The third appellant Narendra Yadav alias Haryanvi also pleaded alibi. He stated that at the time of incident, he was at his parental house in the State of Haryana. He also stated that he has been falsely implicated in the case. He also took the plea that his photographs were flashed in the newspaper before he was shown to Shweta at the Police Station. The other accused persons also pleaded innocence. The defence examined DW 1 Sanjay Sethi and DW 2 Ajay Khugar. Learned Special Judge (Additional Sessions Judge) Women Atrocities, Sriganganagar, by judgment dated 19.8.2000, convicted the appellants Narendra Yadav alias Haryanvi, Reenu alias Narendra Chauhan and Monu alias Virendra Chauhan for the offence u/s.302 IPC and sentenced each of them to imprisonment for life and to pay a fine of Rs.5000/- & in default, to further undergo one year's simple imprisonment. For the offence u/s.460 IPC, each of them has been

sentenced to undergo ten years' R.I. and a fine of Rs.2000/- & in default, to further undergo six months' simple imprisonment. For the offence u/s.307 IPC, each of them has been sentenced to seven years' rigorous imprisonment and to pay a fine of Rs.1000/- & in default, to further undergo six months' S.I. For the offence u/s.380 IPC, each of them has been sentenced to three years' R.I. and to pay a fine of Rs.1000/- and in default, to further undergo three months' S.I. The appellants in S.B.Cr.Appeal No.480/2000 viz; Vijay Kumar alias Lucky, Inder Singh and Krishna Kumar have been convicted of the offence u/s.411 IPC and each of them has been sentenced to six months' S.I. and to pay a fine of Rs.500/- and in default, to further undergo 15 days' S.I.

4. In the instant case, it is not in dispute that deceased Nirmala and deceased Ajay died of homicidal death. PW 7 Dr.Indrapal Singh Pooniya conducted the autopsy on the dead body of Mst.Nirmala vide Ex.P.49 and noticed the following injuries:

> "1. Incised wound 1/2" x 1/5" bone deep left thigh upper 1/3 antr;
>
> 2. Incised wound 1" x 1/5" muscle deep left thigh antr. Upper 1/3;
>
> 3. Stab wound incised 1" x ½" cavity deep below umbilicus;

4. Stab wound incised 1 1/2" x 1/4" cavity deep lateral to above left side;

5. Stab wound incised 1" x 1/2" cavity deep below umbilicus left side;

Fracture of 4th, 5th Rt. side ribs of chest antr.

6. Incised wound 1/2" x 1/5" cavity deep above umbilicus;

7. Incised wound 1 1/2" x 1/2" cavity deep above the above injury 6;

8. Incised wound 1 1/2" x 1/2" cavity deep above the above injury 7;

9. Incised wound 3/4" x 1/2" cavity deep Rt. lumbar region antr;

10. Incised wound 1 1/2" x 1/2" cavity deep below Rt. costal margin antr;

11. Incised wound 1/2" x 1/4" cavity deep below and medial to injury 10;

12. Incised wound 1/2" x 1/4" cavity deep lateral to injury No.11;

13. Incised wound 3/4" x 1/5" cavity deep Left lumbar region antr;

14. Incised wound 1" x 1/2" cavity deep Rt.lower lateral chest;

15. Incised wound 1" x 1/2" cavity deep medical to injury No.14 postr;

16. Incised wound 1" x 1/4" cavity deep below injury 15;

17. Incised wound 1" x 1/5" x muscle deep Rt lumbar region postr;

18. Incised wound 1" x 1/5" x muscle deep below the above injury 17;

19. Incised wound 1" x 1/5" x muscle deep below the injury 18;

20. Incised wound 1 1/2" x 1/2" x muscle deep below

right iliac crest;

21. Incised wound 1" x 1/2" x cavity deep Rt Breast medially;

22. Incised wound 1" x 1/2" x muscle deep Rt breast upper side;

23. Incised wound 3/4" x 1/2" x muscle deep Rt breast lateral side;

24. Incised wound 1/2" x 1/5" muscle deep Rt auxilla;

25. Incised wound 3/4" x 1/2" x muscle deep left lower chest;

26. Incised wound 1 1/2" x 1/2" x bone deep Rt forearm near elbow laterally;

27. Incised wound 1 1/2" x 1/2" x bone deep above Rt elbow laterally;

28. Incised wound 2" x 1/5" x bone deep Rt forearm postr. Middle 1/3;

29. Incised wound 3" x 1" x bone deep Rt wrist antr;

30. Incised wound 1" x 1/5" x muscle deep Rt forearm antr. Upper 1/3;

31. Incised wound 1" x 1/2" x muscle deep left breast medially;

32. Incised wound 1/2" x 1/5" x muscle deep left breast near to nipple medially;

33. Incised wound 3/4" x 1/5" x muscle deep left palm;

34. Incised wound 1" x 1/2" x bone deep left index finger laterally;

35. Incised wound 1/2" x 1/5" muscle deep left hand dorsally."

In his opinion, the cause of death was shock due to haemorrhage. All the injuries were reported to be ante

mortem in nature.

5. He also conducted the autopsy on the dead body of Ajay and noticed the following injuries on his person vide Ex.P.47:

> "Rigor mortis developed, frothing from nose, black colour lips, lateral side mouth & lower face, bluish colour of nails of fingers, thumbs, palms of both hands."

The doctor observed that the cause of death shall be given on receipt of report of chemical examination of viscera. On the F.S.L.Report being received, the doctor opined that the cause of death was asphyxia by smothering.

6. He also examined the injuries on the person of PW 1 Ms Shweta vide Ex.P.44 as follows:

> "1. Incised wound 1/4" x 1/5" not ascertained, below umbilicus;
>
> 2. Incised wound 1/4" x 1/5" not ascertained, left lumbar region laterally;
>
> 3. Incised wound 4" x 1" x muscle deep Rt upper neck;
>
> 4. Incised wound 1" x 1/5" x muscle deep on lumbar spine;
>
> 5. Incised wound 1" x 1/4" x muscle lateral to above Rt side;
>
> 6. Incised wound 1/2" x 1/5" x muscle deep Rt lumbar region postr;

7. Incised wound 1/4” x 1/5” x muscle deep above the above injury;

8. Incised wound 2” x 1/5” x muscle deep upper back Rt lateral to spine;

9. Incised wound 2” x 1/5” x muscle deep below the above injury;

10. Incised wound 1/2” x 1/4” x not ascertained Rt lower chest postr;

11. Incised wound 2” x 1/2” x muscle deep Rt. side above the above injury 10;

12. Incised wound 1” x 1/4” x muscle deep Rt gluteal region;

13. Incised wound 1” x 1/4” x muscle deep medial to above injury;

14. Incised wound 1” x 1/5” x muscle deep below the above injury;

15. Incised wound 1/4” x 1/5” x muscle deep Rt breast lateral;

16. Incised wound 1/2” x 1/5” muscle deep left breast medially.”

7. Assailing the conviction, Mr.H.S.S.Kharlia learned counsel for the appellants has severely criticized the testimony of PW 1 Ms Shweta, the only witness of occurrence. It is submitted that there are number of material infirmities in the statement of PW 1 Shweta, thus, it will not at all be safe to uphold conviction of the appellants solely on the testimony of PW 1 Shweta. It is further submitted that the account of the occurrence given by her does not find corroboration from independent and

material evidence. Learned counsel has also pointed out number of infirmities in the identification proceedings of the persons and the property. On the other hand, learned Public Prosecutor has supported the judgment of the learned trial Court.

8. While referring to the main features of the prosecution case in earlier part of the judgment, we have indicated that how the assault on deceased Nirmala is said to have been mounted by the appellants and how the said incident was allegedly witnessed by the injured witness PW 1 Ms Shweta. The prosecution case hinges on her testimony. She has provided the details of the occurrence in her statement. She deposed that on the fateful day i.e. 11.10.98, appellant Monu Chauhan, a friend of his younger brother deceased Ajay visited their house at about 8.00 or 8.30 PM. She knew her well. Her younger brother deceased Ajay sought permission from the mother for going to see movie alongwith Monu Chauhan. Her mother asked him to bolt the gate of the gallery from inside and put a lock on the main gate from the outside. He was also advised to take a key with him. Thereafter, Ajay left the house in the company of Monu Chauhan to see the movie. She alongwith her mother after taking supper, went upstairs. While her mother went to bed, she got busy in her studies. In the midnight at about 3.00 when she returned after getting fresh to the room, she

found appellant Monu alongwith two boys in the room. She could identify Monu Chauhan as he was a frequent visitor to their house being friend of his brother. One of two associates of Monu Chauhan had pasted a medical band-aid on his nose and cheeks. The other boy had muffled his face. Appellant Monu Chauhan forcibly closed the mouth of her mother pressing by hand. The boy with band-aid face inflicted knife injuries to her mother. Other boy caught hold of her and forcibly closed her mouth by putting his palm. Monu Chauhan abused her mother and exhorted his associate to finish her. Her mother was struggling to get out of the clutches of Monu Chauhan. In the struggle, the hand of Monu slipped from her mouth and she cried for her younger brother Ajay on which Monu Chauhan retorted that he would not respond as he had already been killed downstairs. The bed room of Ajay was on the ground floor. The assailants continued to inflict knife injuries to her mother, till she died. Thereafter, the boy with band-aid face and Monu Chauhan moved towards her. The band-aid boy inflicted knife injuries to her as well. The other boy with muffled face inflicted injuries on her neck. While she was struggling, the towel from which the third assailant had covered his face, slipped. Before making assault on her, Monu uttered, "इसे मारो, इसने मेरी इन्सल्ट की है". He also exhorted the other two assailants to kill her, otherwise she would be the material witness of the occurrence before the

police and the court. As a result of the injuries, she fell down. Monu Chauhan asked the other associates to check if she was dead. They pulled hair and kicked her. She withheld her breathing and became motionless to pretend, as if she was dead. The assailants disconnected the telephone connection by removing the wires. Thereafter, they entered into the Store-room attached to the bed room and changed their clothes. They put on apparels of her younger brother and put their clothes in a bag. Thereafter, they collected the ornaments, valuables and cash from the almirah. The ornaments were brought in the house for her marriage. While the said ornaments were new, her mother's ornaments were artificial. They put the looted property in the suitcase and bag. Appellant Monu and boy with band-aid face removed the ornaments from the body of her mother. The boy earlier with muffled face, removed ornaments from her body. Her mother was wearing two golden chains. She has given the details of the ornaments which her mother was wearing at the time of the incident. She also gave the details of the ornaments she was wearing. The band-aid boy was also having a pistol. He inquired if she was to be shot dead? The idea was not approved on the ground that the same will attract the neighbours. The duration of the entire occurrence was estimated as about one and half hour. While leaving, the assailants put off the lights and bolted the room from outside. She identified both the two unnamed

appellants in the identification parade as well as in the Court. The band-aid boy was identified as Narendra Yadav and other boy with muffled face as Narendra Chauhan. In the morning, she heard the movements of some of the labours on the terrace. Hearing her squall, one of the labours opened the gate and entered inside. She asked the said labour to call her neighbour Indra Aunty. After sometime, PW 2 Indra entered into the room. After seeing her, she quickly went out. Thereafter, the police arrived and she was removed to the hospital. The police recorded her statement Ex.P.1 in the hospital. The learned Magistrate also recorded her statement as Ex.P.2 in the hospital. The list of the stolen articles Ex.P.3 was also given by her. She deposed that she had identified the appellants during identification proceedings Ex.P.4 and Ex.P.5. She also identified the ornaments recovered from the accused persons during identification proceedings Ex.P.6. She identified two jackets recovered from the accused persons. She has given complete details as to the identification of the properties. According to her, apart from the ornaments and other valuables, the assailants had taken away the cash amount in the sum of Rs.70,000/-. She also deposed that at the time of incident, her father was posted in Europe serving the Merchant Navy. Her brother Amit was also in Europe serving Merchant Navy. Appellant Monu Chauhan was the friend of both the brothers. In the cross examination,

mostly she was confronted with certain omissions in her earlier statements Ex.P.1 and Ex.P.2 pointing out certain details which she gave in the court. She has given explanation for such omissions. She stated that while her statements Ex.P.1 and Ex.P.2 were recorded, she was in the wounded condition in the hospital, as such, it was not possible to give complete details. The other part of the cross examination pertains to the identification of the persons and the property, which we shall deal with while discussing the evidence of the identification. She has been confronted with one of the letters Ex.D.2 alleged to be in the handwriting of her deceased mother. She has denied the signature of her mother Nirmala on the said letter. She also denied the letter Ex.D.2 in the handwriting of her mother. She has also stated that when she gave her statement in the hospital, she was in a fit condition to make statement. It was suggested that she had given the statement in the hospital as per the advice of advocate Mamta Chaudhary. She denied the correctness of the suggestion. Thus, none of the criticism levelled against her is of any substance. It is significant to notice that her statement commenced on 17.8.99 and continued upto 19.8.99 i.e. for three days. She had witnessed the trauma in which she herself and her mother were brutally assaulted. She herself sustained 16 to 17 injuries. Still, she has stood to the cross examination by different lawyers for three days. Nothing substantial has

been brought-in to discredit the testimony of this witness. She has given the truthful account of the entire occurrence.

9. PW 2 Smt.Indra deposed that on the fateful day, she went to the house of Nirmala Bhardwaj on being called through Mistri named Raju. On entering into the house, she found Nirmala Bhardwaj lying dead on the bed. Her body was smeared with the blood. Shweta was lying on the floor right side the bed. There was profuse bleeding from her wounds. She was screaming out of pain. She got terrified seeing the scene inside the house. She immediately went out of the house and made known to the people of the locality by shouting to the effect that Nirmala and Shweta Bhardwaj were killed. Large number of people assembled on the spot. Somebody informed the police on telephone. Soon, the police was on the spot. After the police arrived, it revealed that Ajay alias Babloo was also killed and his dead body was lying in a room on the ground floor. Nothing substantial has been elicited to discredit the testimony of the witness.

10. PW 3 Amit, the elder son of deceased Nirmala at the relevant time, was posted in Greece serving Merchantile Navy. He stated that on 13.10.98, he came to know of the shocking news from his father. Receiving the information, he alongwith his father rushed to Sriganganagar. They met

PW 1 Shweta in the hospital. She narrated the incident as to how their mother Nirmala and brother Ajay were killed by Monu and his two other associates in the intervening night of 11th and 12th October, 1998. Later-on, he came to know about participation in the crime of Monu's two other associates viz; Narendra Chauhan who is brother of Monu and another one was Narendra Haryanvi. He identified appellant Monu Chauhan as his school friend. He deposed that Monu was also a close friend of his deceased brother Ajay alias Babloo. He was a frequent visitor of their house. In the cross examination, he denied the suggestion that his father collected money from various people in the city of Ganganagar for getting them employed abroad. He denied the letter Ex.D.2 to be in the handwriting of his deceased mother Nirmala. He also denied the correctness of the contents made in the letter Ex.D.2. He denied to have seen the photographs of the accused persons in the newspaper or on T.V.

11. It is submitted by Mr.H.S.S.Kharlia learned counsel for the appellants, that while it is true that in the normal course, the Court will be loath to reject the testimony of an injured witness, there is no rule of appreciation of evidence that the evidence of injured witness should be mechanically accepted as a gospel truth, for the injuries may only be, at best, show the presence of the witness but are no guarantee

of his or her credibility. It is pointed out that PW 1 Shweta has not been consistent in her statement as to the narration of the occurrence. We are unable to agree with the submission of the learned counsel for the appellants. **In the matter of appreciation of evidence of an injured witness, the normal rule is that if the witness is injured, then his or her presence on the spot at the time of occurrence is prima facie established, unless there is material infirmity in the statement of such witness, his/her credibility cannot be suspected**. In the instant case, inspite of lengthy cross examination, learned counsel has failed to point out any material infirmity in her statement, which may persuade us to discredit her testimony. A great deal of argument has been made with respect to the letter Ex.D.2 alleged to be in the handwriting of deceased Nirmala addressed to her husband and recovered from the place of incident by the police. On the basis of the said letter, it is submitted that the husband of deceased Nirmala had collected huge money from different people in Ganganagar town for arranging jobs for them. As her husband failed to provide job for them, the people were demanding their money back and they had also given threat of serious consequences. Thus, according to the learned counsel, the possibility cannot be ruled out that Mst.Nirmala and Ajay were killed by those people. It is argued that the appellants have been falsely implicated in a case of blind

murder. The contention deserves to be rejected outrightly being devoid of merit. The letter Ex.D.2 was shown to PW 1 Shweta. She has denied the said letter to be in the handwriting of her deceased mother Nirmala. She has also denied her mother's signature on the said letter. Similar denial is by PW 3 Amit. It is evident from the medical evidence that Shweta had sustained large number of injuries on various parts of her body. The injuries establish the presence of PW 1 Shweta at the time and place of occurrence. It is difficult to comprehend that PW 1 Shweta, leaving the actual culprit, will falsely implicate none else but a close friend of his deceased brother. The account given by her of the occurrence also finds corroboration from the medical evidence, prompt F.I.R. and recovery of incriminating articles.

12. Appellant Monu was arrested on 1.2.1999 vide Ex.P.118. In pursuance of the information given by him vide Ex.P.124 dt.8.2.1999, gold ornaments viz; bangle, ring and ear ring and a silver ring were recovered vide Ex.P.91. The recoveries were made in the presence of Gautam Sharma, Rajkumar and PW 12 Dheeraj Kumar Sharma. It is ofcourse true that Gautam Sharma and Rajkumar have not been examined by the prosecution but there is no reason to discredit the testimony of PW 12 Dheeraj Kumar Sharma. The said articles were sealed on the spot and kept intact

until they were produced before the learned magistrate during identification proceedings. PW 1 Shweta has identified all the articles recovered from appellant Monu in the identification proceedings Ex.P.11 dated 13.4.99. The proceedings have been proved by PW 15 Yogendra Kumar, Judicial Magistrate, Sriganganagar. The appellant has failed to give any explanation as to how he came in possession of the jewellery and other articles belonging to deceased Nirmala. At this stage, we may also refer to a piece of circumstance against appellant Monu. PW 10 Prabhu Dayal, a Head Constable in the Home Guard, deposed that appellant Monu alias Virendra Singh was a volunteer in the Home Guard. He reported to the Training Camp in the morning of 12.10.1998 but soon he left. He also stated that at the time of reporting, Virendra Singh was in civil dress. Virendra Singh left the training programme on the pretext of pain in abdomen. He also stated that Virendra Singh was having some fresh scratches on the face. He also wrongly signed in the Register showing his attendance in the evening. He identified appellant Monu alias Virendra Singh in the Court. Thus, it is evident that there is overwhelming evidence against appellant Monu alias Virendra Singh to establish the charge of murder and robbery against him.

13. Appellant Narendra alias Haryanvi was arrested on 1.2.1999 vide Ex.P.119. Similarly, appellant Reenu alias

Narendra Singh was arrested on the same day vide Ex.P.117. The recoveries have been made in pursuance of the informations given by them. They have also been identified by PW 1 Shweta in the identification parade. Learned counsel has severely criticized the evidence of identification parade of both the appellants on the ground that their photographs were flashed in the newspaper. It is submitted that their photographs were shown to PW 1 Shweta before identification parade was held. Learned counsel has referred to the statement of DW 2 Ajay Khugar, the correspondent of the local newspaper viz; "Seema Sandesh". He deposed that on the basis of his report, the photographs of the accused persons in Nirmala Bhargava's case were flashed in the newspaper on 19.10.98. In the cross examination, he admitted that the photographs published were blurred and not easily visible. Learned counsel in support of contention has relied upon a decision of the Apex Court in Ravindra v. State of Maharashtra reported in 1998 SCC (Cri) 1527 and another decision being D.Gopalakrishnan v. Sadanand Naik reported in 2004 Cri.L.J. (SC) 4664.

14. In Ravindra's case (supra), the photographs of the accused persons were shown to the witnesses before the test identification parade and, as such, the contention was raised that the identification in the court was worthless. The

prosecution took the plea that photographs were shown to the witnesses, who were already known to the accused persons. In that context, the Apex Court observed that if really the investigating agency was satisfied that PW 2 and PW 12 did know the appellants from before and they were infact amongst the miscreants, the question of holding the TI parade in respect of them for their identification, could not have arisen.

15. In D.Gopalakrishnan's case (supra), the investigating officer procured the album containing the photographs with the names written underneath and showed the album to the eye witnesses and recorded their statements u/s.161 CrPC. The Apex Court held that the procedure adopted by the police was not justified under the law, as it will affect fair and proper investigation. The Court further observed that during the course of investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not, for sure, show a single photograph but should show more than one photographs of the same person, if available. If the suspect is available for identification or for video identification, the photographs should never be shown to the witness in advance. **Infact, there are no statutory guidelines in the matter of showing photographs to the**

witnesses during investigation. The identification parades belong to investigation stage and they serve to provide the investigating authority with materials to assure themselves if the investigation is proceeding on the right line. Thus, the police is entitled to show the photographs to the witness to confirm whether the investigation is going in the right direction. The only care should be taken that he should show more than one photographs of the same person as observed by the Apex Court in D.Gopalakrishnan's case (supra).

16. In the instant case, PW 1 Shweta has denied the suggestion that the police had shown the photographs of the appellants to her before test identification parade. As regards flashing of the photographs in the newspaper, PW 1 Shweta has stated that she had not come across any newspaper wherein photographs of the accused persons had appeared. Thus, there is no foundation on the basis of which it can be said that PW 1 Shweta identified the appellants on the basis of having seen the photographs, shown either by the police or the same having appeared in the newspaper. Thus, the criticism levelled by the learned counsel for the appellants on this count, is not sustainable and is, accordingly, rejected.

17. Appellant Narendra alias Haryanvi was arrested on 1.2.1999 vide Ex.P.119. It is stated by PW 13 Surendra Kumar that both the appellants were kept `baparda', until the identification parade was held. On the same day, appellant Reenu alias Narendra Singh was arrested vide Ex.P.117. PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar stated that on 9.2.1999, PW 13 Surendra Kumar, incharge of the Police Station, Purani Abadi, Sriganganagar, submitted an application for arranging identification parade for Reenu alias Narendra Singh and Narendra alias Haryanvi. Accordingly, an identification parade was arranged at district jail, Sriganganagar on 10.2.99 at 5.15 PM. The witness of the occurrence PW 1 Shweta was summoned. Both the appellants were produced 'baparda'. He took all the necessary precautions during identification parade. Seven other accused persons were mixed up with the appellants. In the first round, the identification parade of Reenu alias Narendra Singh was arranged vide Ex.P.4. PW 1 Shweta identified the appellant Reenu alias Narendra Singh in the identification proceedings. At 5.25 PM, the identification parade of Narendra alias Haryanvi was arranged vide Ex.P.5. In the said parade, PW 1 Shweta identified Narendra Yadav alias Haryanvi correctly. No serious infirmity in the identification parade, except one which we have dealt with and rejected, has been pointed out. Thus, the presence of

both the appellants in the crime alongwith Monu alias Virendra Singh is established beyond any manner of doubt.

18. Coming to the recovery of the stolen articles, in pursuance of the information given by appellant Narendra alias Haryanvi vide Ex.P.130, number of articles were recovered vide Ex.P.131. However, this piece of circumstance is of no use, as it has been admitted that recovered articles were neither sealed nor put to identification. Similarly, in pursuance of the information given by the appellant Narendra alias Haryanvi vide Ex.P.122, a `khukhari' (dagger) was recovered vide Ex.P.87 on 8.2.99 but the same is of no use as it was not sent for chemical examination and, as such, in absence of positive evidence as to whether the recovered weapon was stained with human blood, the circumstance cannot be used as an incriminating circumstance against the appellant. However, in pursuance of the said information Ex.P.122, a bag containing the ornaments was also recovered vide Ex.P.87 on 8.2.99 in the presence of motbirs viz; Gautam Sharma, Raj Kumar and PW 12 Dhiraj Sharma. The bag containing the ornaments included the articles viz; golden necklace, golden ear rings, golden ring, metallic statue of lord Ganesha. The articles were sealed and packed in packet marked `B'. The articles were identified by PW 1 Shweta in the identification proceedings Ex.P.10 held on 13.4.99 in the

presence of PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar. It is stated by PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar that similar articles were mixed and the identification proceedings were conducted as per the rules taking all requisite precautions. PW 1 Shweta again identified the said articles in the Court. The only criticism levelled against the recovery is that the prosecution has not examined motbirs of the recovery viz; Gautam Sharma and Rajkumar. There is no substance in the criticism levelled, as the recovery has been supported by PW 12 Dhiraj Sharma. It is contended by the learned counsel that PW 12 Dhiraj Sharma has been introduced later-on by the police. We have seen the document Ex.P.87. On face, it cannot be said that the name of Dhiraj Sharma has been inserted later-on. Thus, the prosecution has succeeded in establishing that the stolen articles belonging to deceased Nirmala were recovered from the possession of appellant Narendra alias Haryanvi. The appellant has not given any explanation as to how the said articles came in his possession. Thus, this piece of circumstance corroborates the ocular evidence of PW 1 Shweta and other circumstances referred-to above, to hold appellant Narendra alias Haryanvi guilty of murder of deceased Nirmala punishable under section 302 IPC.

19. Coming to the case of Reenu alias Narendra Singh, his presence in the occurrence has been established from the ocular evidence of PW 1 Shweta. As far as recovery of incriminating articles is concerned, while in custody, in pursuance of the information given vide Ex.P.123 on 8.2.99, articles viz; golden necklace, golden ear rings, three golden rings, pair of silver anklet and silver coins were recovered vide Ex.P.89 in the presence of motbirs Gautam Sharma, Rajkumar and Dhiraj Sharma. The articles were sealed and packed in packet "I". The said articles were identified by PW 1 Shweta in the identification proceedings Ex.P.12 held on 13.4.99 in the presence of PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar. He deposed that similar articles were mixed and identification proceedings were conducted in accordance with the rules taking all necessary precautions. Appellant Reenu alias Narendra Singh gave another information vide Ex.P.125 on 10.2.99 leading to recovery of a jacket and a towel vide Ex.P.92. The recovered articles were identified by PW 1 Shweta in the identification proceedings Ex.P.9 held on 17.4.99. PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar deposed that similar articles were mixed and identification proceedings were conducted in accordance with the rules taking all necessary precautions. Appellant Reenu alias Narendra Singh failed to give any explanation as

to how the jacket belonging to the family of the deceased and the ornaments came in his possession. Thus, the prosecution has succeeded in establishing the evidence of recovery against the appellant in addition to ocular evidence of PW 15 pointing towards the guilt of the appellant in committing murder of Mst.Nirmala.

20. Though there is no direct evidence with respect to commission of murder of deceased Ajay but the very fact that Ajay had also died in the same occurrence when three appellants were in the house of deceased family, clearly speaks that it should be none else but the appellants Monu alias Virendra Singh, Narendra Yadav alias Hariyanvi and Reenu alias Narendra Singh, who committed the murder of Ajay. It may also be stated that PW 1 Shweta has stated that while Narendra alias Haryanvi was inflicting injuries by knife to her deceased mother Nirmala, she cried for Ajay upon which it was retorted by Monu alias Virendra Singh that Ajay had been killed downstairs.

21. As far as appellant Vijay Kumar alias Lucky is concerned, he was arrested on 17.10.98 vide Ex.P.100. In pursuance of the information given by him vide Ex.P.101, a Camera was recovered vide Ex.P.40 on 21.10.98. Another recovery of certain ornaments which included two rings, nose-ring and a bottle of perfume, was made on 22.10.98

vide Ex.P.43, in pursuance of the information Ex.P.102. All these articles were identified in the identification proceedings. All these articles were identified in the identification proceedings Ex.P.6 held on 11.1.1999 by PW 1 Shweta. It is stated by PW 15 Yogendra Kumar, Judicial Magistrate, First Class, Sriganganagar that similar articles were mixed and identification proceedings were conducted in accordance with the rules taking all necessary precautions. The major criticism against the said recovery is that a news with respect to recovery of Camera, rings, nose-ring and a bottle of perfume, had appeared in the newspaper Ex.D.15 dt.16.10.98, as such, it was known prior. Thus, the recovery cannot be said to be in pursuance of the information. We find substance in the contention raised by the learned counsel. If the recovery of Camera, rings, nose-ring and a bottle of perfume was well known to the people, there was no question of making recovery on 21st and 22nd October, 1998, in pursuance of the information given on 21.10.1998. There is no other evidence against appellant Vijay Kumar alias Lucky to connect him with the crime. Thus, the conviction of appellant Vijay Kumar alias Lucky of offence u/s.411 IPC is not sustainable.

22. As regards appellant Inder Singh, a golden bangle was recovered vide Ex.P.112 in pursuance of the information given by him vide Ex.P.111 on 28.10.98 in the presence of

motbirs viz; Parmanand and Ravi Sharma. Similarly, in pursuance of the information given by appellant Krishna Kumar vide Ex.P.110 on 28.10.98, two jackets were recovered vide Ex.P.114 in the presence of motbirs viz; Parmanand and Ravi Sharma. The information regarding the said recovery had also appeared in the newspaper on 18.10.1998. The recoveries from these two appellants do not inspire confidence. Thus, the conviction of appellants Inder Singh and Krishna Kumar of offence under Section 411 IPC is not sustainable.

23. In view of the foregoing discussions, both the appeals are disposed-of as follows:

(i) D.B.Criminal Appeal No.523/2000 filed by Narendra Yadav alias Haryanvi & others stands dismissed being devoid of merit. The conviction of all the three appellants is upheld on all counts. The appellants are in jail. They will serve-out the remaining part of the sentence.

(ii) S.B.Criminal Appeal No.480/2000 filed by Vijay Kumar alias Lucky alias Rana & others is allowed. The conviction of all the appellants of the offence under

Section 411 IPC is set aside. They are on bail. Their bail bonds stand discharged.

(R.P.VYAS), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS